



08-17-06

AF/IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Fallin

Serial No. 10/631,202

Filed: July 31, 2003

For: COATED ANIMAL
FEED SUPPLEMENT

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Art Unit: 1761

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Examiner: Mr. Arthur L. Corbin

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RESPONSE TO NOTIFICATION OF
NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant submitted a Brief for Appellant on May 16, 2006 and a Notification of Non-Compliant Appeal Brief, dated July 31, 2006 was received from the U.S. Patent and Trademark Office.

An amended Appeal Brief is enclosed herewith. The amended brief is completely new and is in accordance with the format set forth in MPEP §1205.02.

The submission is within 30 days of the mailing date of the Notification.

If there are any additional fees required, please charge our Deposit Account No. 02-2839.

Respectfully submitted,

Aug 16, 2006
Date

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RMG/chb
Enclosure

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CERTIFICATE OF TRANSMITTAL

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: August 16, 2006

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By: Carolyn H. Bates
Carolyn H. Bates

Serial No. 10/631,202
Docket No. 03178-PA (0875.0001)

IDENTIFICATION

Applicant:	John C. Fallin
Application No.:	10/631,202
Filing Date:	July 31, 2003
Title of Invention:	COATED ANIMAL FEED SUPPLEMENT
Examiner:	Arthur L. Corbin
Art Unit:	1761
Title of Paper:	APPEAL BRIEF

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Serial No. 10/631,202
Docket No. 03178-PA (0875.0001)

1. Real Party in Interest

The real party in interest is John C. Fallin, the applicant.

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2. Related Appeals and Interferences

None.

3. Status of Claims

The status of the claims in the application is:

Claim 1 (rejected) A coated granular animal feed supplement comprising a coating, wherein the coating is only hydrogenated fat formed on an inorganic feed supplement wherein the inorganic feed supplement is shielded to reduce reaction with moisture and acids and bases.

Claim 2 (canceled).

Claim 3 (canceled).

Claim 4 (rejected) The feed supplement of claim 1, wherein the coating is 1-5% by weight of the feed supplement.

Claim 5 (rejected) The feed supplement of claim 1, wherein the inorganic feed supplement is substantially potassium carbonate.

Claim 6 (rejected) The feed supplement of claim 5, wherein the potassium carbonate is anhydrous.

Claims 7-14 (canceled).

Claims 1 and 4-6 are the subject of the present Appeal.

These claims were rejected in the Advisory Action dated 02/14/2006 and in the final Office Action dated 11/02/2005.

4. Status of Amendments

An Amendment was filed on January 26, 2006, subsequent to the final rejection. This Amendment was not entered because the Advisory Action dated 02/14/2006 said that the proposed Amendment raises new issues.

5. Summary of Claimed Subject Matter

Independent claim 1 recites "the coating is only hydrogenated fat formed on an inorganic feed supplement". Support for this claim is found in the specification on page 3, lines 7-10, 13-16 and page 4, lines 1-3. FIG. 2 was amended on September 20, 2004 to show reference character 10 as the fat.

Independent claim 1 further recites "The inorganic feed supplement is shielded to reduce reaction with moisture and acids and bases.". The support in the specification is on page 3, lines 4-10, page 4, lines 18-20 and amended FIG. 2.

6. Grounds for Rejection to be Reviewed on Appeal

Whether claims 1 and 4-6 are unpatentable under 35 U.S.C. §103(a) over Galler, US Patent 3,196,018 in view of Armand Products Company brochure.

7. Argument

The specification discloses the granules of anhydrous potassium carbonate 12 (animal feed supplement) which are coated with hydrogenated animal fat 10 as shown in FIGS. 1 and 2. No other coating materials are disclosed nor suggested. The method for coating the feed supplement as described on page 3, line 11 through page 4, line 3 discloses only the hydrogenated fat.

The applicant discloses only anhydrous potassium carbonate as the animal feed supplement which is coated to protect the hygroscopic material from collecting moisture and thereby maintaining the product in a free flowing condition. Anhydrous potassium carbonate is recited in dependent claim 6. Galler provides a coating only for the bisulfite adduct of menadione (MBA) (column 1, lines 36-40). Chemically and physically, MBA is different from anhydrous potassium carbonate. Assumptions cannot be made that a coating for one of these materials is satisfactory for the other.

Galler discloses several film materials including cellulose, waxes, fatty acid esters and hydrogenated tallow (column 3, lines 28-35). The Examiner interprets this to mean that the reference discloses a coating of only tallow. The Examiner further infers that only tallow is disclosed by the reference which states that the "product may be prepared by dispersing MBA in a molten or viscous mass of the coating material, subsequently coating an otherwise solidifying and then grinding the resulting slab" (column 3, lines 68-71). It is submitted that this method is useful for tallow mixed with other substances and does not support the Examiner's position. Since the Examiner has introduced the method of preparation, a response must be made that the applicant coats the granules by applying liquified fat to falling granules of anhydrous potassium carbonate (page 3, line 17 to page 4, line 3). The reference does not disclose nor suggest coating the MBA in any related manner.

The applicant disagrees with the Examiner's understanding of Galler. The applicant interprets Galler to disclose a film material which is composed of a mixture of materials such as described in the examples

listed in columns 5 and 6. Example IX is the only example which lists tallow and it is mixed with methyl cellulose. Nowhere does Galler state that the film material is not a mixture of materials.

Applicant wishes to point out that as required by MPEP 2143.01, there must be some suggestion or motivation to combine the references. The level of skill in the art cannot be relied upon to provide the suggestion to combine the references. In re Rouffet 47 USPQ2d 1453 (1457-58). The mere fact that the references can be combined does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills 16 USPQ2D 1430. Note particularly that the conclusion that the modification would be well within the ordinary skill of the art is not sufficient. There must be some objective reason to combine the teachings of the references.

Applicant also notes that Galler issued in 1965 and Armand states that the producers of potassium carbonate combined in 1986. This chemical was in production many years before the merger date. Thus, at a minimum, the disclosure of Galler has coexisted with the commercial availability of anhydrous potassium carbonate for at least 30 years. Armand recognizes the hygroscopic properties of potassium carbonate but does not suggest or disclose a coating for the material (page 15). No one in this expanse of time has been motivated to combine the references as suggested by the Examiner. The Examiner, in the Office Action of May 5, 2005, admits that "Galler does not disclose that the coating is used on an inorganic feed supplement or that the supplement is anhydrous potassium carbonate". It is submitted that there is no motivation in the references that they be combined in any manner. The combination, as suggested by the Examiner, is impermissible hindsight.

It is respectfully submitted that Galler is not a valid reference to reject the claim because it does not teach only hydrogenated fat as a coating for the feed supplement. Galler has never suggested or disclosed coating anhydrous potassium carbonate. The material coated by Galler is different from the material coated by the applicant.

Armand does not suggest a coating on anhydrous potassium carbonate.

The references have coexisted for over 30 years and no one skilled in the art has ever combined the references as suggested by the Examiner.

The Examiner has not provided any motivation for coating the anhydrous potassium carbonate feed supplement with only hydrogenated fat. The Examiner is relying on impermissible hindsight construction, and relying on applicant's own disclosure to make her rejection. This is improper.

Appellant believes that the above arguments rebut the Examiner's rejection under 35 U.S.C. §103 and requests that the Examiner's rejection of claims 1 and 4-6 be reversed.

8. Claims Appendix

Claim 1 A coated granular animal feed supplement comprising a coating, wherein the coating is only hydrogenated fat formed on an inorganic feed supplement wherein the inorganic feed supplement is shielded to reduce reaction with moisture and acids and bases.

Claim 4 The feed supplement of claim 1, wherein the coating is 1-5% by weight of the feed supplement.

Claim 5 The feed supplement of claim 1, wherein the inorganic feed supplement is substantially potassium carbonate.

Claim 6 The feed supplement of claim 5, wherein the potassium carbonate is anhydrous.

9. Evidence Appendix

None.

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10. Related Proceedings Appendix

None.